IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1430

JEFFREY C. STRICKLAND, JOHN CHARLES MCELVEY, KELLY FRANKLIN HARRIS, DIANNE YEOMANS and JOEL SMITH, JR.,
*Petitioners*

v.

THE STATE OF GEORGIA,
*Respondent*

## PETITION FOR THE WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS

SALIBA AND NEWSOM

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PETITION FOR THE WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS

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Petitioners named above pray that a Writ of Certiorari issue to review the Judgment of the Georgia Court of Appeals entered against Petitioners on

November 7, 1977. Application to the Supreme Court of Georgia for Writ of Certiorari was denied on January 20, 1978.

## OPINION BELOW

A copy of the opinion of the Georgia Court of Appeals and the Order of the Georgia Supreme Court denying certiorari are annexed hereto as Appendix "A" and "B" respectively. (Application for rehearing was denied January 31, 1978) The holding herein complained of was based on State v. Patterson, 143 Ga. App. 225, a copy of which is annexed as Appendix "C". The Georgia Court of Appeals, through a separate division had decided an identical issue in a contrary manner to the instant case and the Patterson case, ie, State v. Robinson 142 Ga. App. 705, thereby refusing to apply the law of Connally v. Georgia,



429 US 285, equally to all citizens of Georgia. The Robinson decision is annexed as Appendix "D".

The opinion of the Georgia Court of Appeals herein sought to be reviewed refuses Petitioners the benefits of the United States Supreme Court holding in Connally v. Georgia, 429 US 285 even-though the Connally issue was raised by the Petitioners in pre-arraignment stages.

## JURISDICTION

The judgment of the Georgia Court of Appeals was entered on November 7, 1977. Application for Certiorari was denied by The Georgia Supreme Court on January 20, 1978. Jurisdiction of this Court is invoked under 28 U.S.C. §1257.

## QUESTION PRESENTED

Does the constitutional ruling of this Court in Connally v. Georgia, 429 U.S.

285 apply to criminal cases in pre-arraignment stages on the date of the Connally decision?

CONSTITUTIONAL PROVISION INVOLVED

Amendment IV

The right of the people to be secure in their persons, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

Article XIV

. . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law,



nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

Petitioners cases all involve searches and seizures based on warrants issued by Lowndes County, Georgia, Magistrates operating under Ga. Code Ann. §24-1601. That section provided that if Magistrates issued a search warrant upon application they would receive a fee. If no warrant issues, no fee was paid. It was stipulated at pretrial Motion to Suppress that the Magistrates were paid for the issuance of the warrants but would not have been paid had the application for warrant been denied. All search warrants here in question dated between November 2, 1976 and December 31, 1976, which were after the occurrences of the Connally facts and prior to the publication of the Connally decision on

January 10, 1976. All petitioners filed a pretrial Motion to Suppress relying upon the Connally holding. The Trial Court granted the Motion upon authority of Connally, the State appealed and the Georgia Court of Appeals reversed holding Connally inapplicable reasoning, that since the Magistrates had good faith their impartiality was not destroyed by the fee system. (Another division of Georgia Court of Appeals reached an opposite result on the identical issue on June 10, 1977; State v. Robinson, 142, Ga. App. 705)

The Connally decision held that the payment of a Magistrate for issuance of a search warrant where there would be no payment for refusal to issue search warrant destroyed the impartiality of the Magistrate and voided the warrant.

REASONS FOR GRANTING WRIT



1.

The Petitioners have, by the Georgia Court of Appeals holding, been denied the benefits of a mandate of the Supreme Court of the United States involving Petitioners' Constitutional guarantee against illegal seizures. The Georgia Court of Appeals have circumvented the plain language of this Court and have refused to require issuance of warrants by an impartial and detached Magistrate. The holding of the Georgia Court is a judicial fiat that good faith is tantamount to probable cause. Such is not the requirement of the constitution as interpreted by this Court. If good faith is the legal test for issuance of a search warrant, the Connally case never would have gotten to or have been reversed by this Court as the Connally Magistrate surely had good faith. The issue at hand is not one of retro-

activity, the Connally issue was raised by Petitioners at pretrial stages. The Georgia Courts have denied the Petitioners protection under established rule of constitutional law timely invoked before trial. The Motion to Suppress was heard by the Trial Court after the date of the Connally decision.

2.

Petitioners are denied equal protection under the law by the Georgia Court of Appeals by that Courts' inconsistent holdings in State v. Robinson, 142 Ga. App. 705 and State v. Patterson, 143 Ga. App. 225. (The decision herein complained of was based on the Patterson holding). The Georgia Courts have allowed some citizens of Georgia the benefit of the Connally holding i.e. Christy A. Robinson, et al, but have denied the same benefit to others i.e. Ricky Patterson and Petitioners. Such unequal



application of the law is expressly prohibited by the constitution.

CONCLUSION

Because of both reasons cited above, (1) The failure of the Georgia Court to apply Connally but to substitute good faith for constitutional requirements and (2) The refusal of the Georgia Courts to equally apply the law as announced in Connally, the decision of the Georgia Courts should be reconsidered by this Court.

RESPECTFULLY SUBMITTED,

SALIBA AND NEWSOM

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# APPENDIX

## APPENDIX

54145. THE STATE v. STRICKLAND, et al
21-118

McMURRAY, Judge.

Defendants are charged with violations of the Georgia Controlled Substances Act. The several cases were combined in the trial court for the purpose of determining the various motions to suppress evidence. It was established by stipulation that each of the search warrants had been issued by judicial officers (some by a justice of the peace and one by a judge of the small claims court) who were paid for the issuance of the respective search warrants pursuant to Code Ann. §24-1601 (Ga.L. 1967, pp. 469, 470, since amended by Ga. L. 1977, pp. 196, 197). It was further stipulated that each of the judicial officers would not have been paid had he not issued the warrants in question. It was stipulated further

that the judicial officers in question were on the fee system at the time of the issuance of these warrants and that all of their income derived from their positions was under the fee system. All of the search warrants in question were issued and executed prior to January 10, 1977, the date of the decision of Connally v. Georgia, 429 US 245 (97 SC 546, 50 LEd2d 444) [#76-461, decided January 10, 1977]. Applying the holding in Connally v. Georgia, supra, the trial court granted defendants' motions to suppress evidence, and the State appeals under the authority of Code Ann. §6-1001a(d) (Ga.L. 1973, pp. 297, 298)

Held:

The sole issue presented by this appeal is whether the decision of Connally v. Georgia, 429 US 245, supra, should be applied where the search warrants in question were issued and executed prior to January 10, 1977, the date of that decision. This issue has been decided adversely to the defendants. State v. Patterson, 143 Ga. App. 225 ( SE2d ) [#54176, decided 9/8/77]. See also United States v. Peltier, 422 US 531 (95 SC 2313, 45 LE2d 374), and cases cited therein.

Judgment reversed. Bell, C.J., and Smith, J., concur.

2a.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta January 20, 1978. Dear Sir: Case No. 33281. Strickland, et al v. State.

The Supreme Court today denied the writ of certiorari in this case. Hall & Hill, JJ., dissent. Very truly yours, MRS. JOLINE B. WILLIAMS, Clerk.

54176. THE STATE v. PATTERSON (B-121) BIRDSONG, Judge. The State appeals the grant of defendant's motion to suppress certain evidence. The court granted the motion in accordance with principles enunciated in Connally v. The State of Georgia,_____US_____(97 SCt 546, 50 LEd2d 444) (1977), wherein the United States Supreme Court held that the issuance of a search warrant by a Justice of the Peace effected a violation of the protections afforded by the Fourth and Fourteenth Amendments of the United States Constitution. The State asserts that the Court erred in applying the Connally decision retroactively. HELD:

Reversed. The retroactive application of the exclusionary rule has engendered much controversy. Where, however, concededly relevant evidence would be excluded in order to enforce a constitutional guarantee unrelated to the fact-finding process- the United States Supreme Court has consistently held that any such new constitutional principle would be accorded only prospective application. United States v. Peltier, 422 US 531 (95 SCt 2313, 45 LEd2d 374) (1975) and cases cited therein. The analysis of the retroactivity cases has focused on the purposes served by the exclusionary rule, which, being remedial in nature, has been restricted in its application "to those areas where its remedial objectives are thought most efficaciously served." U.S. v. Calandra, 414 US 338, 348 (94 SCt 613, 33 LEd2d 238) (1974). Thus, in Michigan v. Tucker, 417 US 433 (94 SCt 2357, 41 LEd2d 182) (1974), the U.S. Supreme Court stated: "The deterrent purpose of the exclusionary rule necessarily assumes that

the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused. Where the official action was pursued in complete good faith, however, the deterrence rational loses much of its force." Page 447.

Neither is the "imperative of judicial intergrity" offended by the introduction into evidence of material seized by law enforcement officers acting reasonably and in good faith that such evidence was obtained in accordance with constitutional norms prevailing at the time of seizure. As the U.S. Supreme Court stated, in U.S. v. Peltier, supra: "[T]he 'imperative of judicial integrity' is also not offended if law enforcement officials reasonably believed in good faith that their conduct was in accordance with the law even if decisions subsequent to the search or seizure have held that conduct of the type engaged in by law enforcement officials is not permitted by the Constitutuion." Id. at pp. 537-38.

Here the evidence established that the Gwinnett County Justice of the Peace issued the warrant in complete good faith, in accordance with the law of Georgia, with no knowledge of the possible unconstitutionality of his actions. Accordingly, we hold that the court erred in applying the Connally decision retroactively. Judgment reversed. Deen, P.J. and Webb, J. concur.

53821. THE STATE v. ROBINSON et al

QUILLIAN, Presiding Judge.

The State appeals the grant of defendants' motion to suppress certain evidence. The sole ground urged by defendants was that the search warrant was issued by a Justice of the Peace who was not neutral by virtue of his financial interest in the decision of whether or not to issue the warrant. Held:

The trial judge found as follows: "At the time the Justice of the Peace issued the search warrant in this case, he was aware that under the law he was entitled to collect a fee of $5.00 for issuing the warrant, but was not entitled to collect any fee for refusing to issue the warrant. This Justice of the Peace has never collected a fee for issuing a search warrant and to date has not collected a fee in this case. He knew at the time he issued this search warrant that an arrest warrant would probably issue later, and if he issued the arrest warrant, he would collect a fee for doing so. The Justice of the Peace's financial welfare, therefore, could be enhanced by positive action and would not be enhanced by negative action.

The Court, therefore, finds that this case falls within the ruling of the United States Supreme Court in John Connally v. the State of Georgia, US (1977), in that the issuance of the search warrant by the Justice of the Peace effected a violation of the protections afforded these defendants by the Fourth and Fourteenth Amendments of the United States Constitution."

The United States Supreme Court has not declared Code Ann. §24-1601 (Ga. L. 1949, pp. 956-959; 1958, pp. 201, 202; 1967, p.

469) unconstitutional. It has, however, held that a Justice of Peach who issues a search warrant can not be a neutral, detached magistrate because he receives remuneration under that statute for issuing a search warrant but not for denying one. The test as given is whether his financial welfare is enchanced by positive action and no' enhanced by negative action. Connally v. Georgia, US , supra. The trial judge having found as a fact that the Justice of Peace's financial condition could be enhanced by positive action, absent errors of law, we will not reserve where there is some evidence to sustain the judge's findings.

Judgment affirmed. Shulman and Banke, JJ., concur.

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v.

THE STATE OF GEORGIA, *Respondent.*

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## PETITION FOR THE WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS

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## BRIEF OF RESPONDENT

---

DISTRICT ATTORNEY
SOUTHERN JUDICIAL CIRCUIT

BY: H. Lamar Cole and
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IN THE

SUPREME COURT OF

THE UNITED STATES

OCTOBER TERM, 1978

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NO. 77-1430

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Petitioners,

v.

THE STATE OF GEORGIA,

Respondent.

# BRIEF OF RESPONDENT

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## OPINION BELOW

State accepts Petitioners' statement of opinion below.

JURISDICTION

State accepts Petitioners' statement of jurisdiction.

QUESTION PRESENTED

State accepts Petitioners' statement of question presented.

CONSTITUTIONAL PROVISION INVOLVED

State accepts Petitioners' statement of Constitution issues.

STATEMENT OF THE CASE

State accepts Petitioners' statement of the case.

REASONS FOR DENYING WRIT

1.

The decision of the Georgia Court of Appeals is in accord with applicable



decisions of the Supreme Court of the United States involving the retroactivity of cases and the exclusionary rule.

In Desist v U.S., 394 U.S. 244, 89 Supreme Court 1030,(1969), three guiding criteria are set forth by which a new case decision may be held retroactive. First, the purposes of the Connally holding and the exclusionary rule are remedial. No purpose can be achieved by their application to past conduct. Secondly, the Connally rule effects established criminal procedure relied on by law enforcement officials in good faith. No purpose of deterrence can be had by applying the Connally decision retroactively. Lastly, the

Connally decision has no effect on "the fairness of trial". Therefore judicial integrity is not offended by denying retroactivity.

2.

There has been no refusal on the part of the Georgia Courts to equally apply the law. The following cases cited by the Petitioners decided two distinct issues. In State v Robinson, 142 Ga. App. 705, the court applied the Connally decision. In State v Patterson, 143 Ga. App. 225, the court refused to apply Connally retroactively.



CONCLUSION

Because the Petitioners' cases were decided in accordance with applicable decisions of this Court, the Writ should be denied.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I, H. LAMAR COLE, Attorney of Record for the respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of the foregoing Brief for the Respondent in Opposition upon the petition by depositing a copy of same in the United States mail, with proper address and adequate postage thereon to:

SALIBA & NEWSOM
George Saliba
Post Office Box 1683
Valdosta, Georgia 31601

This 15th day of June, 1978.

/s/ H. LAMAR COLE
H. LAMAR COLE